

**\*OGC Has Reviewed\***

OGC 65-0927a

24 MAY 1965

MEMORANDUM FOR: Director of Personnel

SUBJECT: Training for Re-employment

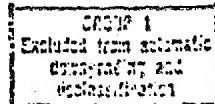
1. By memorandum of 12 February you have requested our opinion as to the legality and propriety of this Agency's spending appropriated funds to provide education and training for prospective retirees in order to improve their qualifications for outside employment. The following quotation from your memorandum sets out several additional, specific questions:

4. In order to frame the issue more clearly, I would appreciate your answering the following questions in relation to the hypothetical circumstances of employees A, B, and C as described below.

a. Employee A. On 29 January 1965, the Secretary of the CIA Retirement Board notified this Career Employee that he should prepare to retire under the Civil Service Retirement System, in accordance with Agency policy effective 15 February 1970 when he will be 62 years old and will have completed 15 years of Federal Service, all with this Agency.

(1) May the Agency prior to 15 February 1968 continue to pay Employee A's salary while excusing him from duty for a period of six months to pursue a full-time course of education which would enable him to complete requirements for an M.A. degree in Education?

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(2) If the answer to Question 1 is yes, may the period of such excused absence continue for as long as one year?

(3) If the answer to Question 1 is yes, may the end of the period of excused absence coincide with the effective date of the employee's retirement?

b. Employee B. This Career Employee's position was abolished effective 15 December 1964. It has been determined subsequently that the Agency can offer him no other suitable assignment, and he plans to retire on a discontinued service annuity under the Civil Service Retirement System based upon his 26 years of Federal Service of which 12 were in the military and 14 were in this Agency.

(1) May the Agency continue to pay Employee B's salary while excusing him from duty for a period of 2 months to attend full-time training in a technical school in preparation for opening his own business as a TV and Radio repairman?

(2) If the answer to the above question is yes, what would be the maximum period for which the Agency could excuse such absence with pay?

c. Employee C. This Career Employee has notified the Agency of his intent to retire optionally under the Civil Service Retirement System effective 15 March 1966 when he will be 55 years of age and will have completed 30 years of Federal Service -- 18 with this Agency.

(1) May the Agency continue to pay Employee C's salary while excusing him from duty for a period of 6 months to pursue a full-time course of education which will enable him to complete requirements for the M.A. degree in Education?

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(2) If the answer to the above question is yes, may the period of such excused absence continue beyond 15 March 1966, thus having the effect of extending the date of Employee C's retirement?

(3) If the answer to Question c. (1) is yes, what is the maximum period during which the Agency can arrange such excused absence?

d. Under any of the above circumstances in which you indicate that the Agency may continue payment of salary while excusing an employee from duty:

(1) What is the Agency's obligation to approve the specific training objective of the prospective retiree?

(2) Would the time spent in such periods of absence from duty be credited to the employee for retirement purposes?

(3) Would the employee accrue annual and sick leave at his normal rate during such periods of absence from duty?

e. How would your answers to the questions under sub-paragraphs b and c, above, differ if the employee were eligible to retire under the CIA Retirement System instead of the Civil Service Retirement System?

2. Authority available to the Government generally, the Government Employees Training Act, establishes a program under which the various departments provide training in Government and non-Government facilities for selected employees. However, the Act defines the training authorized thereunder as the process of providing for and making available to an employee a program of instruction or education in "fields which are or will be directly related to the performance by such employee of official duties for the Government, in order to increase the knowledge, proficiency,

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ability, skill and qualifications of such an employee in the performance of official duties" (emphasis supplied). In view of the purposes and the intended operation of the proposed Agency program, we believe the program could not be authorized under the authority of the Government Employees Training Act.

3. The National Security Act of 1947 provides "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." The CIA Act of 1949 provides that "sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions." We understand the objective in providing training for persons scheduled for retirement is founded in the main on security considerations. We believe this consideration would permit a decision by the Director to establish and operate a training program based upon the authority provided by the two statutes. Whether and to what extent the program should be discussed with congressional committee leaders, the Bureau of the Budget or the General Accounting Office would be a matter for policy determination only.

4. Experience of other Government departments with related problems also may be of interest. The Department of State, whose Foreign Service employees, like those of CIA, may possess a great deal of highly classified information but who unlike their CIA colleagues may take into retirement a title, a visible record, and an ability to discuss much of their Foreign Service background, has sought, unsuccessfully, to obtain legislation authorizing training for prospective retirees. There is statutory authority permitting the Government to furnish training for military personnel. This authority is not directed only to prospective retirees but in practice is used extensively for that purpose.

5. While we have no doubt that a program of training for prospective retirees, founded on security considerations, properly may be authorized, we would think also that a program lavish, extreme, or unreasonable would be outside the bounds of propriety. It might be in order to provide training only for certain employees, to restrict the period of training, to base it on the number of years of employment, the employee's grade or his type of work, to confine training to off-duty hours, or to apply other standards. It might be in order also to require the employee to pay a percentage of costs. It might be in order also to require a finding by the Director of

Personnel that the individual has no readily salable talents and training would tend to cure this defect, or that he is so rusty in his profession or skill that he would need retraining to make him marketable. Or training might be made available only to persons who retire under the CIA Retirement Act. It seems likely, in any event, that it will prove difficult to establish any fair and workable standards by which employees are to be selected. Your attention is called to the Comptroller General ruling of 1951 holding that the Agency's special authorities under section 8 of the CIA Act are not to be used to "disregard... any control with respect to the normal administrative or operating problems which confront the ordinary government agency." We believe this ruling could be the guideline by which the various duties and standards concerning the program are reached.

6. Two questions posed by your memorandum are:

- a. whether an employee may be excused from his normal duties and assigned to training duties on a full-time basis, and
- b. whether the training period may extend beyond his retirement date.

As to the former, we believe it would not be correct to regard these employees as excused from duty while pursuing a full-time course of education or training. Rather, the training should be considered the duty required of them for the periods involved. It would mean also that it would be appropriate to require the employee to perform at least 40 hours of duty per week, which could be a combination of hours of work at his normal duties plus the hours devoted to attending and preparing for classes. This situation, it may be noted, could present troublesome FECA questions on which the advice of BEC might be desirable prior to the institution of the program. As to the latter question, we agree with the suggestion in your question c. (2) that continuation of an employee's salary while he engages in training beyond his scheduled retirement date would have the effect of extending the date of retirement. We have no legal difficulty with this result, assuming the retirement date is a date earlier than the date the employee reaches the mandatory retirement age. In this connection, consideration might be given to the establishment of a post-employment

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retirement program, in which the retiree would be afforded a grant for training purposes, perhaps in the amount of his salary plus the training costs, less the amount of his annuity. This approach would have the virtue of avoiding FECA problems and the question of assigning an employee no duties other than attending and preparing for training classes and would lessen administrative costs to the Agency and require a smaller out-of-pocket cost to the Agency.

7. At this stage we would prefer to respond to your other questions in general terms only. We think the Agency would be obligated to approve the specific training objectives of the prospective retiree and, in addition, would be obligated to monitor the retiree's performance. Training, which because it is ill chosen or badly performed, would not accomplish the purpose of assisting the retiree to obtain new employment and thus would not fall within a security-based decision to provide training. During the periods of training the individual would continue to be an employee and the time devoted to training therefore would figure in his eligibility for retirement. During this period also he would continue to earn annual and sick leave. Finally, we perceive no distinction in these matters as between retirees under the Civil Service and the CIA Retirement Systems.

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General Counsel

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